

ARTICLE IX. ZONING BOARD OF APPEALS

9-1. Membership.

- A. Membership and Appointments. The Fayette County Zoning Board of Appeals (the "Board") shall consist of five (5) members residing within the County and shall be appointed by the Board of Commissioners of Fayette County. None of the Board members shall hold any other public office, except that one (1) member may also be a member of the Planning Commission. Board members shall be removed for cause, upon written charges, and after public hearing. Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest. It shall be deemed cause for removal should any Board member fail, without proper reason, to attend three (3) consecutive meetings.
- B. Term of Office. The term of office for each member of the Board shall be for three (3) years; however, in the appointment of the first Board, two (2) members shall be appointed for three (3) years; two (2) for two (2) years and one (1) for one (1) year. It is the intent of this section that their terms be staggered. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. If one appointee is a member of the Planning Commission, and he ceases to be a member of said Planning Commission during the term of his appointment to the Board, his membership shall terminate and the governing authority may name a member of the Planning Commission to fill the unexpired term of the original appointee.
- C. Compensation. The Board members shall receive compensation for their service as determined by the Board of Commissioners of Fayette County.

9-2. Rules and Procedures. The Board shall elect one of its members as Chairman and another as Vice-Chairman, each serving for one (1) year, or until re-elected, or a successor is elected. The Vice-Chairman shall have the authority to act as Chairman in the Chairman's absence. The Board shall appoint a Secretary who shall be an employee of Fayette County. The Board shall have authority to adopt rules of procedure. Meetings of the Board shall be held at the call of the Chairman. The Chairman may administer oaths and compel the attendance of witnesses by subpoena. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The decisions of the Board shall contain a statement of the subject matter being considered by the Board, the decisions of the Board, and the grounds for its decision reduced to written form. The full text shall be sent to the appellant. No appeal which seeks the same relief in regard to the

following the date of the written decision from the previous appeal, except that this limitation shall not affect the right of the Board to grant a rehearing as provided in the rules of procedure as may be adopted by the Board.

- 9-3. Administrative Assistance. The Zoning Administrator shall provide such technical, administrative, and clerical assistance and office space as is required by the Board to carry out its function under the provisions of herein.

9-4. Public Hearing.

- A. Notice of Hearing Shall be Given. Before making its decision on an appeal, a request for a variance, or any other matter within the Board's purview, the Board shall hold a public hearing thereon. At least fifteen (15) days notice of the time and place of such hearing shall be sent to the appellant/petitioner by certified U.S. Mail to the appellant/petitioner's last known address. Similar notice shall be provided to the Planning Commission. Such notice shall contain the name of the appellant/petitioner; the date, time and place set for the hearing; and a brief statement of the nature of the hearing.
- B. Public Notice in Newspaper. The Board shall cause public notice of the hearing to be published in the legal organ of Fayette County at least fifteen (15) days prior to the date of the public hearing.
- C. Who May Appear. Any party may appear at the public hearing in person or by agent or attorney.
- D. Time Limit on Board's Decision. The Board shall reach a decision following a public hearing within thirty (30) days. The decision of the Board shall be made by a public vote and shall not be final until the resolution of the decision has been duly adopted and approved by the Board.

9-5. Powers and Duties.

- A. Appeals from Actions of the Zoning Administrator. The Board shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of these regulations.
1. Who May Appeal. Appeals to the Board may be taken by any person aggrieved or by an officer, department, board, or bureau of the governing authority affected by any decision of the Zoning Administrator. Such appeals

Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

2. Legal Proceedings Stayed. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would, in the Zoning Administrator's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order from a court of competent jurisdiction.
3. Extent of Board of Appeals Power. The Board may, in conformity with the provisions of these regulations, reverse or affirm the order, requirement, decision, or determination of the Zoning Administrator. The Board may direct the issuance of a permit. It shall be the duty of the Zoning Administrator to carry out the decisions of the Board.

B. Request for a Variance. The Board may authorize, upon appeal in specific cases, a variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. However, a variance shall not be granted for a use of land, building, or structure that is prohibited in the zoning district at issue. A variance may be granted in an individual case upon a finding by the Board that the following exists:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and
3. Such conditions are peculiar to the particular piece of property involved; and
4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein; and

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed; and

6. Provided that the Board may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhoods; and provided that wherever the Board shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions, or restrictions upon which such permit was granted are not being complied with, said Board shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a hearing. In exercising the above powers, the Board shall not consider any nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning districts as grounds for the issuance of a variance.
- C. Request for Change of the Nonconforming Use of a Structure. The Board may authorize, upon appeal in specific cases, a change in the nonconforming use of a structure in accordance with the provisions of Section 7-2.C herein.
- D. Request for Extension or Enlargement of the Nonconforming Use of a Structure. The Board may authorize upon appeal in specific cases an extension of an existing nonconforming use which the Board is specifically authorized to pass on under the terms herein. Said extensions may be granted in an individual case upon a finding by the Board that:
1. The use is a nonconformance as defined in these regulations;
 2. The use is in full compliance with all requirements of these regulations applicable to nonconformances; and
 3. The extension of said use will not further injure a permitted use on adjacent property in the same zoning district.
- E. Continuance of Nonconformance. The Board may allow a nonconformance to be re-established after discontinuance for six (6) consecutive months where it is deemed by the Board that:
1. The design, construction, and character of the land, building, or structure is not suitable for uses permitted in the zoning district in which the nonconformance is situated; and
 2. Undue hardship to the property owner would result in not allowing the continuance of a nonconformance; and
 3. Adjacent property would not be unduly damaged by such continuance; and

4. The use is to be identical to the prior nonconformance.
- F. Compliance with Standards. Where an application to the Board is initiated due to an existing violation of the Zoning Ordinance and said application is denied, the violation shall be required to be corrected within ten (10) days of such denial or as specified by the Board if a greater time period is necessary. The maximum extension of the time shall not exceed thirty (30) days.
- G. Forms. Appeals, requests for variances, and requests for extensions or continuances of nonconformances shall be made on forms provided by the Zoning Administrator; and all information requested on the forms shall be provided by the appellant. Forms shall be filed with the Zoning Administrator along with the necessary fees incidental to the appeal. No form shall be accepted by the Zoning Administrator unless it contains all pertinent information and is accompanied by the required fee.